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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,771	01/16/2004	Jack C. Kruger	016295.1532	6311
7590	03/28/2006			
Roger Fulghum Baker Botts L.L.P. One Shell Plaza 910 Louisiana Street Houston, TX 77002-4995			EXAMINER ELAMIN, ABDELMONIEM I	
			ART UNIT 2116	PAPER NUMBER
DATE MAILED: 03/28/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No.	Applicant(s)	
	10/758,771	KRUGER ET AL.	
	Examiner	Art Unit	
	A Elamin	2116	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3, 8-9, 14-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Huh et al, US. Pat. No. 6,584,559.

3. Claims 1, 8, 14-15, Huh teaches a method for updating the existing firmware in a device with replacement firmware [*the method of Figs. 2 and 3*], comprising the steps of:

downloading the replacement firmware to the device [*step 100 of Fig. 2*];

storing the replacement firmware in a storage location in the device [*download firmware to non-volatile memory, step 108 of Fig. 2*];

determining if the replacement firmware was successfully downloaded to and stored at the device [*step 112 of Fig. 2*];

setting an indicator in the device if the download and storage of the replacement firmware was successful [*step 128 of Fig. 2*]; and

replacing the existing firmware with the replacement firmware during the first boot of the device following the successful download and storage of the replacement firmware to the device [*step 236 of Fig. 3*].

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4. Claims 2, 16, transmitting a message to indicate that the download and storage of the replacement firmware was successful [*inherently, upon successfully downloading a software or an application the user would be notified*].

5. Claims 3, 9, Huh teaches the step of replacing the existing firmware with the replacement firmware further comprises the steps of: initiating a boot of the device [*step 200 of Fig. 3*]; determining whether the indicator identifies that the replacement firmware was successfully downloaded and stored to the device [*step 212 of Fig. 3*]; if the indicator identifies that that the replacement firmware was successfully downloaded and stored to the device, replacing the existing firmware of the device with the replacement firmware [*YES to step 212 of Fig. 3*]; clearing the indicator [*step 244 of Fig. 3*]; and executing the replacement firmware as part of the boot of the device [*step 236 of Fig. 3*].

6. Claim 17, Huh teaches monitoring whether the indicator has been set to indicate that replacement firmware is available [*step 208 of Fig. 3*]; writing the firmware update to the storage location associated with the existing firmware of the device [*nonvolatile memory*]; and completing the boot of the device with the software of the firmware update [*step 236 of Fig. 3*].

7. Claim 18, Huh teaches writing the firmware update over the existing firmware in the flash memory of the device [*col. 3, line 40*].

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 4-7, 10-13, 19-20 rejected under 35 U.S.C. 103(a) as being unpatentable over Huh et al, US. Pat. No. 6,584,559.

10. Claims 4-5, 10-11, 19, Huh fails to teach the device comprises a hard disk drive and the storage location is disk storage in the hard disk drive.

However, Examiner asserts that these types of limitations are considered field of use, and are not patentably distinct.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the method of Huh in a hard disk drive, because it provides a significant improvement in system availability [*see Huh, col. 1, lines 30-37 and col. 3, lines 1-2*].

11. Claims 6, 12, 20, Huh teaches the existing firmware is stored in flash memory [*col. 3, line 40*].

12. Claims 7, 13, Huh teaches writing the replacement firmware to the flash memory location of the existing firmware [*step 108 of Fig. 2*].

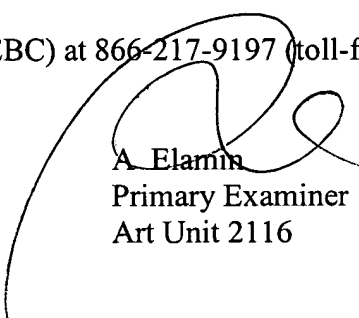
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to A Elamin whose telephone number is (571) 272-3674. The examiner can normally be reached on MON-FRI 9:30 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne can be reached on (571) 272-3670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



A. Elamin
Primary Examiner
Art Unit 2116

March 21, 2006